

## The Seal of the United States Supreme Court is located at the bottom of the page. It features a shield with a scale of justice, a sword, and a laurel wreath. The shield is flanked by two figures, and the entire seal is encircled by the words "UNITED STATES SUPREME COURT" and the date "MDCCCLXXXIII".

No. 13-0248 RV

1. Kuhn resided within the city limits of O'Fallon, Missouri, in May 2011.

2. On August 1, 2011, Kuhn purchased a motor vehicle, a 2011 Hyundai (“the Hyundai”) for \$28,049.00 from a motor vehicle dealer in Missouri.<sup>1</sup>
3. On August 30, 2011, Kuhn registered and titled the Hyundai at the license office located in O’Fallon (“the license office”).
4. Although Kuhn provided his correct address to the license office when he registered the Hyundai, the license office representative incorrectly determined the amount of local tax owed. The representative calculated the amount of local tax Kuhn owed based on the St. Charles County rate (1.725%) instead of the correct rate for the City of O’Fallon (3.725%).
5. Kuhn paid local sales tax in the amount of \$483.85 when he registered the Hyundai.
6. The City of O’Fallon audited the license office. The audit determined that Kuhn had paid local sales tax at the rate of 1.725% instead of the correct rate of 3.725%.
7. On January 18, 2013, the Director issued a final decision assessing Kuhn additional local sales tax in the amount of \$560.98 – the difference between the amount of local sales tax Kuhn paid (\$483.85), and the correct local sales tax for O’Fallon (\$1,044.83).
8. Kuhn timely appealed the Director’s final decision.

### **Conclusions of Law**

We have jurisdiction to hear Kuhn’s complaint. Section 621.050.1.<sup>2</sup> Kuhn has the burden to prove he is not liable for the amount that the Director assessed. Sections 621.050.2 and 136.300.2. Our duty in a tax case is not merely to review the Director’s decision, but to find the facts and to determine, by the application of existing law to those facts, the taxpayer’s lawful tax liability for the period or transaction at issue. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990). We may do whatever the law permits the Director to do, and

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<sup>1</sup> There is no evidence in the record where the dealer was located. With no evidence to the contrary, and because Kuhn has the burden of proof in this proceeding, we infer that the dealer was located in Missouri.

<sup>2</sup> Statutory references, unless otherwise noted, are to RSMo 2000.

we must do what the Director must do. *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., W.D. 1974).

Section 144.070.1, RSMo Supp. 2012, provides:

At the time the owner of any new or used motor vehicle, trailer, boat, or outboard motor which was acquired in a transaction subject to sales tax under the Missouri sales tax law makes application to the director of revenue for an official certificate of title and the registration of the motor vehicle, trailer, boat, or outboard motor as otherwise provided by law, the owner shall present to the director of revenue evidence satisfactory to the director of revenue showing the purchase price exclusive of any charge incident to the extension of credit paid by or charged to the applicant in the acquisition of the motor vehicle, trailer, boat, or outboard motor, or that no sales tax was incurred in its acquisition, and if sales tax was incurred in its acquisition, the applicant shall pay or cause to be paid to the director of revenue the sales tax provided by the Missouri sales tax law in addition to the registration fees now or hereafter required according to law, and the director of revenue shall not issue a certificate of title for any new or used motor vehicle, trailer, boat, or outboard motor subject to sales tax as provided in the Missouri sales tax law until the tax levied for the sale of the same under sections 144.010 to 144.510 has been paid as provided in this section or is registered under the provisions of subsection 5 of this section.

Section 144.069 provides:

**All sales of motor vehicles, trailers, boats and outboard motors shall be deemed to be consummated at the address of the owner thereof**, and all leases of over sixty-day duration of motor vehicles, trailers, boats and outboard motors subject to sales taxes under this chapter shall be deemed to be consummated unless the vehicle, trailer, boat or motor has been registered and sales taxes have been paid prior to the consummation of the lease agreement at the address of the lessee thereof on the date the lease is consummated, **and all applicable sales taxes levied by any political subdivision shall be collected on such sales by the state department of revenue on that basis.**

(Emphasis added). Thus, when the purchaser of a motor vehicle registers that vehicle, he or she must pay all applicable taxes, including all sales taxes levied by a political subdivision. The

local sales taxes are determined by the owner's address because § 144.069 deems any such sale to be consummated there.

Finally, § 32.087.13, RSMo Supp. 2012, provides:

**Local sales taxes** imposed pursuant to the local sales tax law on the purchase and sale of motor vehicles, trailers, boats, and outboard motors shall not be collected and remitted by the seller, but **shall be collected by the director of revenue at the time application is made for a certificate of title, if the address of the applicant is within a taxing entity imposing a local sales tax under the local sales tax law.**

(Emphasis added). Kuhn lived within the city limits of O'Fallon when he registered the Hyundai. But he paid local sales tax at a rate lower than O'Fallon's, because that is what the license office told him to pay.

Kuhn registered his vehicle and paid the tax, believing he had discharged his duty. Almost two years later, he received a notice telling him he owed additional tax. No doubt this was an unpleasant surprise. Although the notice of assessment did not so state, his underpayment of local sales tax may have been due to a mistake made by the license office. Kuhn is understandably frustrated by this turn of events, and states that paying the assessment will pose a hardship for his family.

These feelings are understandable, but we are unable to simply excuse Kuhn's liability for the additional tax. Because this Commission was created by state statutes, we have only such authority as the statutes give us. *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974). Neither the Director, his employees, nor this Commission has the power to change the law. *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985). The law provides that all applicable sales taxes, including all local sales taxes, must be paid when a vehicle is registered. Kuhn did not pay the correct amount of local sales tax when he registered the Hyundai. He must do so now. He is entitled to a credit against this amount of

\$483.85, the amount he previously paid. Kuhn may be able to negotiate a payment plan with the Director.

### **Summary**

Kuhn is liable to pay the assessment of \$560.98, additional local sales tax owed to the City of O'Fallon, on his purchase of the Hyundai.

SO ORDERED on August 20, 2013.

/s/ Karen A. Winn  
KAREN A. WINN  
Commissioner